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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/288,837	04/08/1999	GENE H. MACDONALD	5470-238	7924

20792 7590 08/19/2004  
MYERS BIGEL SIBLEY & SAJOVEC  
PO BOX 37428  
RALEIGH, NC 27627

EXAMINER

LUCAS, ZACHARIAH

ART UNIT PAPER NUMBER

1648

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

84

<b>Examiner-Initiated Interview Summary</b>	<b>Application No.</b> 09/288,837	<b>Applicant(s)</b> MACDONALD ET AL.	
	<b>Examiner</b> Zachariah Lucas	<b>Art Unit</b> 1648	

**All Participants:**

(1) Zachariah Lucas.

(2) Karen A. Magri.

**Status of Application:** \_\_\_\_\_

(3) \_\_\_\_\_.

(4) \_\_\_\_\_.

**Date of Interview:** 28 July 2004

**Time:** \_\_\_\_\_

**Type of Interview:**

- ☒ Telephonic  
☐ Video Conference  
☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

**Exhibit Shown or Demonstrated:** ☐ Yes ☐ No

If Yes, provide a brief description: \_\_\_\_\_

**Part I.**

**Rejection(s) discussed:**

NA

**Claims discussed:**

104

**Prior art documents discussed:**

NA

**Part II.**

**SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:**

*See Continuation Sheet*

**Part III.**

- ☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.  
☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

  
(Examiner/SPE Signature)

  
(Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed: The Examiner called Applicant and indicated that the claims would be in condition for allowance if the claims were further amended (over the amendments in the After Final submitted on July 9, 2004) to read on compositions wherein the heterologous nucleic acid sequences encode the Her2 antigen, rather than any Her2 gene product. The Applicant did not accept the proposed amendment.

The Applicant did argue that the application was enabling for vectors encoding fragments of the claimed antigen. However, the Examiner stated that, in view of the fact that the suggested claims would be allowed over the prior art on the basis of unexpected results, and as the application does not demonstrate that such results are present when only portions of the Her2 antigen are used, the claims as presently amended remain obvious over the prior art to the extent that they do not read on embodiments comprising the whole Her2 antigen.

Applicant offered additional evidence, in the form of an article, to support the breadth of the claims. The Examiner agreed to consider the article.